IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/04/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

SECOND APPEAL No.1458 OF 1993

Govinda Koundar ... Appellant

-Vs-

1.P.Natarajan
2.P.Gajendran ... Respondents

Second Appeal preferred under Section 100 of the Code of Civil Procedure for the relief as stated therein.

For appellant : Mr.N.Vanchinathan
For respondents: Miss R.Yamini for
Mr.G.Rangarajan

:JUDGMENT

The above Second Appeal is directed against the judgment and decree dated 30.4.1993 rendered in A.S.No.16 of 1992 by the Court of Subordinate Judge, Arni thereby dismissing the said appeal preferred against the judgment and decree dated 7.12.1991 rendered in O.S.No.711 of 19 90 by the Court of District Munsif, Arni.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the respondents herein have filed the suit in O.S.No.711 of 1990 before the Court of District Munsif, Arni claiming a sum of Rs.1,000/= as damages from the appellant/defendant on ground that the appellant de
lit fire to the sugarcane crop of the plaintiffs. The appellant/ defendant filed a written statement thereby denying the allegation of the respondents/plaintiffs and in turn alleging that the respondents/ plaintiffs have only lit fire to his sugarcane crop.

3. Based on the above pleadings, the trial Court has framed five issues, viz.:
1.Whether the defendant has set fire to the sugarcane?
2.Whether there was standing crop of ten months old sugarcane?
3.Whether there was standing crop of sugarcane in 0.20 cents of land?
4.Whether there was loss of sugarcane to the value of Rs.3,000/=?

5.What relief the plaintiffs are entitled to?

4. Thereupon, the trial Court has conducted the trial wherein on behalf of the respondents/plaintiffs, the second plaintiff besides examining himself as P.W.1 would also examine the first plaintiff as P.W.2 for oral evidence and would mark two documents for documentary evidence as Exs.A.1 and A.2. On the contrary, on behalf of the appellant/defendant, he would examine himself as D.W.1, but no documentary evidence is placed on record on behalf of the defendant. One P.Pandiyan, the Advocate-Commissioner has been examined as Court Witness C.W.1 and would mark two documents as Exs.C.1 and C.2.

5. The trial Court, having assessed the facts and circumstances of the case in the light of the evidence adduced, has ultimately decreed the suit in part thereby granting compensation of Rs.300/=. Aggrieved, the defendant therein has preferred an appeal in A.S.No.16 of 1992 before the Court of Subordinate Judge, Arni and the said Court also having framed three points viz., (1) Whether the plaintiffs are entitled to get the compensation amount claimed?, (2) whether the appeal is entitled to be allowed? and (3) what relief, are the appellants entitled to?, has held that the respondents/plaintiffs have not established their claim for compensation and hence they are not entitled to compensation. However, the appellate Court has held that the appeal is not maintainable under Section 96(4) of the C.P.C. and has dismissed the same as not maintainable.

6. It is only aggrieved against such findings of the first appellate Court, the defendant before the trial Court has come forward to prefer the above second appeal on certain grounds as brought forth in the grounds of appeal and this Court has admitted the same for determination of the following substantial question of law, subject to the respondents raising any objection regarding the maintainability of the second appeal at the time of final hearing of the second appeal:

"Whether the lower appellate Court was right in the view it took that Section 96(4), Code of Civil Procedure, would be applicable?"

7. During arguments, the learned counsel for the appellant would submit that the Court below failed to note that Section 15(1) of the Provincial Small Cause Courts Act, 1887 which lays down that a Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule relating to suits for compensation for an act which amounts to an offence against property; that accordingly the Court below ought to have held that the present suit by the respondent comes within the definition of the Article 35(ii) and that Section 96(4) of CPC has no application at all.

8. A plain reading of the said Section would reveal that a suit for an act which is punishable under Chapter XVII of the Indian Penal Code would not lie before the Court of Small Causes and in this Section only the jurisdiction of the Small Causes Court is discussed. But, in the case in hand, the question is not the jurisdiction of the Small Causes Court as per the said provision of law but on an entirely different footing i.e. 'whether the appeal preferred as against the decision of a Small Causes Court within

the parameters of Section 96(4) CPC is maintainable?'

9. There is no point in confusing the whole lot questioning the jurisdiction of the Small Causes Court to entertain a suit of such nature in the light of a criminality of an offence committed regarding a property. Therefore, the point of Small Causes Court gaining its original jurisdiction does not have any nexus regarding entertainment of the appeal by the appellate Court and therefore an independent decision has to be taken for arriving at a valid conclusion pertaining to the substantial question of law framed in the above second appeal, in the light of Section 96(4) of the C.P.C.

10. Since it is Section 96(4) of the CPC, which is relevant for consideration, it has become necessary on the part of this Court to extract the Section:

"No appeal shall lie except on a question of law from a decree in any suit of the nature cognizable by the Court of Small Causes when the amount or value of the subject matter of the original suit does not exceed Rs.10,000/=."

11. The above provision of law is very clear and unambiguous and needs no clarity or clarification meaning thereby that no appeal shall lie from any suit of the nature cognizable by the Court of Small Causes when the amount or value of the subject matter of the suit does not exceed Rs.10,000/= unless on a question of law.

12. In the instant case, the value of the subject matter being only Rs.1,000/=, as valued by the appellant herein at the time of filing of the suit, it goes without saying that no appeal will lie as against a judgment passed by the Court of Small Causes in the suit in hand on facts and hence this Court does not feel that the lower appellate Court has committed any error in deciding that the appeal which cannot lie before it because of the bar created under Section 96(4) of the CPC.

13. In the above circumstances, this Court is of the clear view that the above second appeal, on account of the mandatory provision of law laid down under Section 96(4) of the CPC, cannot be entertained and becomes liable to be dismissed in limine even without going into the merit of the case and the same is decided accordingly. On the above point of law, the above second appeal becomes inadmissible and not maintainable before this Court, the only substantial question of law framed on that point having come to be answered in the negative i.e. against the appellant and hence the following decision:

In result,

(i) the above second appeal does not merit acceptance and becomes liable only to be dismissed and is dismissed accordingly.

(ii)The judgment and decree dated 30.4.1993 rendered in A.S.No.16 of 1992 by the Court of Subordinate Judge, Arni is hereby confirmed.

However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes
Internet: Yes
Rao

To
1.The Subordinate Judge,
Arni.

2.The District Munsif,
Arni.